

HOUSE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 280

AN ACT

2 To repeal sections 105.711, 258.100, 307.178,  
3 408.040, 430.225, 508.010, 508.040, 508.120,  
4 510.263, 516.170, 537.067, 538.205, 538.210,  
5 and 538.225, RSMo, and to enact in lieu  
6 thereof twenty-eight new sections relating to  
7 tort reform.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
9 AS FOLLOWS:

10 Section A. Sections 105.711, 258.100, 307.178, 408.040,  
11 430.225, 508.010, 508.040, 508.120, 510.263, 516.170, 537.067,  
12 538.205, 538.210, and 538.225, RSMo, are repealed and twenty-  
13 eight new sections enacted in lieu thereof, to be known as  
14 sections 105.711, 258.100, 307.178, 408.040, 430.225, 508.010,  
15 508.040, 508.120, 510.263, 512.023, 512.099, 516.170, 516.600,  
16 537.067, 537.327, 537.530, 537.768, 537.770, 538.205, 538.210,  
17 538.213, 538.225, 538.227, 538.301, 1, 2, 3, and 4, to read as

1 follows:

2 105.711. 1. There is hereby created a "State Legal Expense  
3 Fund" which shall consist of moneys appropriated to the fund by  
4 the general assembly and moneys otherwise credited to such fund  
5 pursuant to section 105.716.

6 2. Moneys in the state legal expense fund shall be  
7 available for the payment of any claim or any amount required by  
8 any final judgment rendered by a court of competent jurisdiction  
9 against:

10 (1) The state of Missouri, or any agency of the state,  
11 pursuant to section 536.050 or 536.087, RSMo, or section 537.600,  
12 RSMo;

13 (2) Any officer or employee of the state of Missouri or any  
14 agency of the state, including, without limitation, elected  
15 officials, appointees, members of state boards or commissions and  
16 members of the Missouri national guard upon conduct of such  
17 officer or employee arising out of and performed in connection  
18 with his or her official duties on behalf of the state, or any  
19 agency of the state, provided that moneys in this fund shall not  
20 be available for payment of claims made under chapter 287, RSMo;  
21 or

22 (3) (a) Any physician, psychiatrist, pharmacist,  
23 podiatrist, dentist, nurse or other health care provider licensed  
24 to practice in Missouri under the provisions of chapter 330, 332,  
25 334, 335, 336, 337 or 338, RSMo, who is employed by the state of

1 Missouri or any agency of the state, under formal contract to  
2 conduct disability reviews on behalf of the department of  
3 elementary and secondary education or provide services to  
4 patients or inmates of state correctional facilities or county  
5 jails on a part-time basis;

6 (b) Any physician licensed to practice medicine in Missouri  
7 under the provisions of chapter 334, RSMo, and his professional  
8 corporation organized pursuant to chapter 356, RSMo, who is  
9 employed by or under contract with a city or county health  
10 department organized under chapter 192, RSMo, or chapter 205,  
11 RSMo, or a city health department operating under a city charter,  
12 or a combined city-county health department to provide services  
13 to patients for medical care caused by pregnancy, delivery and  
14 child care, if such medical services are provided by the  
15 physician pursuant to the contract without compensation or the  
16 physician is paid from no other source than a governmental agency  
17 except for patient co-payments required by federal or state law  
18 or local ordinance;

19 (c) Any physician licensed to practice medicine in Missouri  
20 under the provisions of chapter 334, RSMo, who is employed by or  
21 under contract with a federally funded community health center  
22 organized under Section 315, 329, 330 or 340 of the Public Health  
23 Services Act (42 U.S.C. 216, 254c) to provide services to  
24 patients for medical care caused by pregnancy, delivery and child  
25 care, if such medical services are provided by the physician

1 pursuant to the contract or employment agreement without  
2 compensation or the physician is paid from no other source than a  
3 governmental agency or such a federally funded community health  
4 center except for patient co-payments required by federal or  
5 state law or local ordinance. In the case of any claim or  
6 judgment that arises under this paragraph, the aggregate of  
7 payments from the state legal expense fund shall be limited to a  
8 maximum of [one million] five hundred thousand dollars for all  
9 claims arising out of and judgments based upon the same act or  
10 acts alleged in a single cause against any such physician, and  
11 shall not exceed [one million] five hundred thousand dollars for  
12 any one claimant;

13 (d) Any physician, nurse, physician assistant, dental  
14 hygienist, or dentist licensed or registered pursuant to chapter  
15 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides  
16 medical, dental or nursing treatment within the scope of his  
17 license or registration at a city or county health department  
18 organized under chapter 192, RSMo, or chapter 205, RSMo, a city  
19 health department operating under a city charter, or a combined  
20 city-county health department, or a nonprofit community health  
21 center qualified as exempt from federal taxation under Section  
22 501(c)(3) of the Internal Revenue Code of 1986, as amended, if  
23 such treatment is restricted to primary care and preventive  
24 health services, provided that such treatment shall not include  
25 the performance of an abortion, and if such medical, dental or

1 nursing services are provided by the physician, dentist,  
2 physician assistant, dental hygienist or nurse without  
3 compensation. In the case of any claim or judgment that arises  
4 under this paragraph, the aggregate of payments from the state  
5 legal expense fund shall be limited to a maximum of five hundred  
6 thousand dollars, for all claims arising out of and judgments  
7 based upon the same act or acts alleged in a single cause and  
8 shall not exceed five hundred thousand dollars for any one  
9 claimant, and insurance policies purchased pursuant to the  
10 provisions of section 105.721 shall be limited to five hundred  
11 thousand dollars; or

12 (e) Any physician, nurse, physician assistant, dental  
13 hygienist, or dentist licensed or registered to practice  
14 medicine, nursing or dentistry or to act as a physician assistant  
15 or dental hygienist in Missouri under the provisions of chapter  
16 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides  
17 medical, nursing or dental treatment within the scope of his  
18 license or registration to students of a school whether a public,  
19 private or parochial elementary or secondary school, if such  
20 physician's treatment is restricted to primary care and  
21 preventive health services and if such medical, dental or nursing  
22 services are provided by the physician, dentist, physician  
23 assistant, dental hygienist, or nurse without compensation. In  
24 the case of any claim or judgment that arises under this  
25 paragraph, the aggregate of payments from the state legal expense

1 fund shall be limited to a maximum of five hundred thousand  
2 dollars, for all claims arising out of and judgments based upon  
3 the same act or acts alleged in a single cause and shall not  
4 exceed five hundred thousand dollars for any one claimant, and  
5 insurance policies purchased pursuant to the provisions of  
6 section 105.721 shall be limited to five hundred thousand  
7 dollars; or

8 (4) Staff employed by the juvenile division of any judicial  
9 circuit; or

10 (5) Any attorney licensed to practice law in the state of  
11 Missouri who practices law at or through a nonprofit community  
12 social services center qualified as exempt from federal taxation  
13 under Section 501(c)(3) of the Internal Revenue Code of 1986, as  
14 amended, or through a legal clinic operated by or through any  
15 public or private school of law located in this state or through  
16 any agency of any federal, state, or local government, if such  
17 legal practice is provided by the attorney without compensation.  
18 In the case of any claim or judgment that arises under this  
19 subdivision, the aggregate of payments from the state legal  
20 expense fund shall be limited to a maximum of five hundred  
21 thousand dollars for all claims arising out of and judgments  
22 based upon the same act or acts alleged in a single cause and  
23 shall not exceed five hundred thousand dollars for any one  
24 claimant, and insurance policies purchased pursuant to the  
25 provisions of section 105.721 shall be limited to five hundred

1     thousand dollars.

2             3. The department of health and senior services shall  
3     promulgate rules regarding contract procedures and the  
4     documentation of care provided under paragraphs (b), (c), (d),  
5     and (e) of subdivision (3) of subsection 2 of this section. The  
6     limitation on payments from the state legal expense fund or any  
7     policy of insurance procured pursuant to the provisions of  
8     section 105.721, provided in subsection [5] 6 of this section,  
9     shall not apply to any claim or judgment arising under paragraph  
10    (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of  
11    this section. Any claim or judgment arising under paragraph (a),  
12    (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this  
13    section shall be paid by the state legal expense fund or any  
14    policy of insurance procured pursuant to section 105.721, to the  
15    extent damages are allowed under sections 538.205 to 538.235,  
16    RSMo. Liability or malpractice insurance obtained and maintained  
17    in force by any physician, dentist, physician assistant, dental  
18    hygienist, or nurse for coverage concerning his or her private  
19    practice and assets shall not be considered available under  
20    subsection [5] 6 of this section to pay that portion of a  
21    judgment or claim for which the state legal expense fund is  
22    liable under paragraph (a), (b), (c), (d), or (e) of subdivision  
23    (3) of subsection 2 of this section. However, a physician,  
24    nurse, dentist, physician assistant, or dental hygienist may  
25    purchase liability or malpractice insurance for coverage of

1 liability claims or judgments based upon care rendered under  
2 paragraphs (c), (d), and (e) of subdivision (3) of subsection 2  
3 of this section which exceed the amount of liability coverage  
4 provided by the state legal expense fund under those paragraphs.  
5 Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3)  
6 of subsection 2 of this section is repealed or modified, the  
7 state legal expense fund shall be available for damages which  
8 occur while the pertinent paragraph (a), (b), (c), (d), or (e) of  
9 subdivision (3) of subsection 2 of this section is in effect.

10 4. The attorney general shall promulgate rules regarding  
11 contract procedures and the documentation of legal practice  
12 provided under subdivision (5) of subsection 2 of this section.  
13 The limitation on payments from the state legal expense fund or  
14 any policy of insurance procured pursuant to section 105.721 as  
15 provided in subsection 6 of this section shall not apply to any  
16 claim or judgment arising under subdivision (5) of subsection 2  
17 of this section. Any claim or judgment arising under subdivision  
18 (5) of subsection 2 of this section shall be paid by the state  
19 legal expense fund or any policy of insurance procured pursuant  
20 to section 105.721 to the extent damages are allowed under  
21 sections 538.205 to 538.235, RSMo. Liability or malpractice  
22 insurance otherwise obtained and maintained in force shall not be  
23 considered available under subsection 6 of this section to pay  
24 that portion of a judgment or claim for which the state legal  
25 expense fund is liable under subdivision (5) of subsection 2 of



1 this section. However, an attorney may obtain liability or  
2 malpractice insurance for coverage of liability claims or  
3 judgments based upon legal practice rendered under subdivision  
4 (5) of subsection 2 of this section which exceed the amount of  
5 liability coverage provided by the state legal expense fund under  
6 subdivision (5) of subsection 2 of this section. Even if  
7 subdivision (5) of subsection 2 of this section is repealed or  
8 amended, the state legal expense fund shall be available for  
9 damages which occur while the pertinent subdivision (5) of  
10 subsection 2 of this section is in effect.

11 5. All payments shall be made from the state legal expense  
12 fund by the commissioner of administration with the approval of  
13 the attorney general. Payment from the state legal expense fund  
14 of a claim or final judgment award against a physician, dentist,  
15 physician assistant, dental hygienist, or nurse described in  
16 paragraph (a), (b), (c), (d), or (e) of subdivision (3) of  
17 subsection 2 of this section or against an attorney in  
18 subdivision (5) of subsection 2 of this section shall only be  
19 made for services rendered in accordance with the conditions of  
20 such paragraphs.

21 [5.] 6. Except as provided in subsection 3 of this section,  
22 in the case of any claim or judgment that arises under sections  
23 537.600 and 537.610, RSMo, against the state of Missouri, or an  
24 agency of the state, the aggregate of payments from the state  
25 legal expense fund and from any policy of insurance procured

1 pursuant to the provisions of section 105.721 shall not exceed  
2 the limits of liability as provided in sections 537.600 to  
3 537.610, RSMo. No payment shall be made from the state legal  
4 expense fund or any policy of insurance procured with state funds  
5 pursuant to section 105.721 unless and until the benefits  
6 provided to pay the claim by any other policy of liability  
7 insurance have been exhausted. In no event shall the state legal  
8 expense fund pay more than five hundred thousand dollars to any  
9 one claimant. For purposes of this section, all individuals and  
10 entities asserting a claim for a wrongful death pursuant to  
11 section 537.080, RSMo, shall be considered to be one claimant.  
12 Payment from the state legal expense fund resulting from a claim  
13 against an individual precludes execution of a judgment against  
14 such individual or the individual's estate for tort actions  
15 committed by such individual.

16 [6.] 7. The provisions of section 33.080, RSMo,  
17 notwithstanding, any moneys remaining to the credit of the state  
18 legal expense fund at the end of an appropriation period shall  
19 not be transferred to general revenue.

20 [7.] 8. Any rule or portion of a rule, as that term is  
21 defined in section 536.010, RSMo, that is promulgated under the  
22 authority delegated in sections 105.711 to 105.726 shall become  
23 effective only if it has been promulgated pursuant to the  
24 provisions of chapter 536, RSMo. Nothing in this section shall  
25 be interpreted to repeal or affect the validity of any rule filed

1 or adopted prior to August 28, 1999, if it fully complied with  
2 the provisions of chapter 536, RSMo. This section and chapter  
3 536, RSMo, are nonseverable and if any of the powers vested with  
4 the general assembly pursuant to chapter 536, RSMo, to review, to  
5 delay the effective date or to disapprove and annul a rule are  
6 subsequently held unconstitutional, then the grant of rulemaking  
7 authority and any rule proposed or adopted after August 28, 1999,  
8 shall be invalid and void.

9 258.100. 1. As used in this section, the word "trail"  
10 means any land [previously used as a railroad right-of-way] which  
11 was acquired by the state for use as a public hiking, biking or  
12 recreational trail or any land or interest therein acquired  
13 hereafter by a [municipality or county] political subdivision for  
14 use as a public hiking, biking or recreational trail[, located in  
15 any county of the first classification which contains a city with  
16 a population of one hundred thousand or more inhabitants which  
17 adjoins no other county of the first classification, or in a  
18 county of the first classification with a population of over nine  
19 hundred thousand]. However, a trail not acquired by the state  
20 must be designated by the governing body of the [municipality or  
21 county] political subdivision as a greenway system of trails or  
22 part of a dedicated system of trails, the acquisition [deed]  
23 conveyance whether by deed, easement agreement, grant assignment,  
24 or reservation of rights to the [city or county] political  
25 subdivision must state the interest in the land is being granted

1 for such purposes, the greenway system or dedicated system of  
2 trails must be designed exclusively for the purposes herein  
3 designated, and shall not include roads or streets, nor  
4 sidewalks, walkways or paths which are intended to connect  
5 neighborhoods for pedestrian traffic, such as common sidewalks or  
6 walkways.

7 2. Any person owning land adjoining the trail shall be  
8 immune from civil liability for injuries to person or property of  
9 persons trespassing or entering on such person's land without  
10 implied or expressed permission, invitation, or consent where:

11 (1) The person who was injured entered the land by way of  
12 the trail; and

13 (2) Such person was subsequently injured on lands adjoining  
14 the trail.

15 3. The immunity created by this section does not apply if  
16 the injuries were caused by:

17 (1) The intentional or unlawful act of the owner or  
18 possessor of such land; or

19 (2) The willful or wanton act of the owner or possessor of  
20 such land; or

21 (3) The failure of the possessor of land to warn of an  
22 artificial condition which is likely to cause death or serious  
23 injury created or maintained by the possessor of the land.

24 307.178. 1. As used in this section, the term "passenger  
25 car" means every motor vehicle designed for carrying ten persons

1 or less and used for the transportation of persons; except that,  
2 the term "passenger car" shall not include motorcycles, motorized  
3 bicycles, motor tricycles and trucks with a licensed gross weight  
4 of twelve thousand pounds or more.

5 2. Each driver, except persons employed by the United  
6 States Postal Service while performing duties for that federal  
7 agency which require the operator to service postal boxes from  
8 their vehicles, or which require frequent entry into and exit  
9 from their vehicles, and front seat passenger of a passenger car  
10 manufactured after January 1, 1968, operated on a street or  
11 highway in this state, and persons less than eighteen years of  
12 age operating or riding in a truck, as defined in section  
13 301.010, RSMo, on a street or highway of this state shall wear a  
14 properly adjusted and fastened safety belt that meets federal  
15 National Highway, Transportation and Safety Act requirements;  
16 except that, a child less than four years of age shall be  
17 protected as required in section 210.104, RSMo. No person shall  
18 be stopped, inspected, or detained solely to determine compliance  
19 with this subsection. The provisions of this section shall not  
20 be applicable to persons who have a medical reason for failing to  
21 have a seat belt fastened about their body, nor shall the  
22 provisions of this section be applicable to persons while  
23 operating or riding a motor vehicle being used in agricultural  
24 work-related activities. Noncompliance with this subsection  
25 shall not constitute probable cause for violation of any other

1 provision of law.

2 3. Each driver of a motor vehicle transporting a child four  
3 years of age or more, but less than sixteen years of age, shall  
4 secure the child in a properly adjusted and fastened safety belt.

5 4. In any action to recover damages arising out of the  
6 ownership, common maintenance or operation of a motor vehicle,  
7 failure to wear a safety belt in violation of this section shall  
8 [not] be considered as evidence of comparative negligence.

9 Failure to wear a safety belt in violation of this section may  
10 also be admitted to mitigate damages[, but only under the  
11 following circumstances:

12 (1) Parties seeking to introduce evidence of the failure to  
13 wear a safety belt in violation of this section must first  
14 introduce expert evidence proving that a failure to wear a safety  
15 belt contributed to the injuries claimed by plaintiff;

16 (2) If the evidence supports such a finding, the trier of  
17 fact may find that the plaintiff's failure to wear a safety belt  
18 in violation of this section contributed to the plaintiff's  
19 claimed injuries, and may reduce the amount of the plaintiff's  
20 recovery by an amount not to exceed one percent of the damages  
21 awarded after any reductions for comparative negligence] of an  
22 insurer or party to the action.

23 5. Each driver who violates the provisions of subsection 2  
24 or 3 of this section is guilty of an infraction for which a fine  
25 not to exceed ten dollars may be imposed. All other provisions

1 of law and court rules to the contrary notwithstanding, no court  
2 costs shall be imposed on any person due to a violation of this  
3 section. In no case shall points be assessed against any person,  
4 pursuant to section 302.302, RSMo, for a violation of this  
5 section.

6 6. The department of public safety shall initiate and  
7 develop a program of public information to develop understanding  
8 of, and ensure compliance with, the provisions of this section.  
9 The department of public safety shall evaluate the effectiveness  
10 of this section and shall include a report of its findings in the  
11 annual evaluation report on its highway safety plan that it  
12 submits to NHTSA and FHWA pursuant to 23 U.S.C. 402.

13 7. If there are more persons than there are seat belts in  
14 the enclosed area of a motor vehicle, then the driver and  
15 passengers are not in violation of this section.

16 408.040. 1. Interest shall be allowed on all money due  
17 upon any judgment or order of any court from the day of rendering  
18 the same until satisfaction be made by payment, accord or sale of  
19 property; all such judgments and orders for money upon contracts  
20 bearing more than nine percent interest shall bear the same  
21 interest borne by such contracts, and all other judgments and  
22 orders for money shall bear nine percent per annum until  
23 satisfaction made as aforesaid.

24 2. Notwithstanding the provisions of subsection 1, in tort  
25 actions, if a claimant has made a demand for payment of a claim

1 or an offer of settlement of a claim, to the party, parties or  
2 their representatives and the amount of the judgment or order  
3 exceeds the demand for payment or offer of settlement,  
4 prejudgment interest and post-judgment interest, at [the rate  
5 specified in subsection 1 of this section] a per annum interest  
6 rate equal to the coupon issue yield equivalent, as determined by  
7 the Federal Reserve Board, of the average accepted auction price  
8 for the last auction of fifty-two week United States Treasury  
9 bills settled immediately prior to the date of the judgment,  
10 shall be calculated from a date sixty days after the demand or  
11 offer was made, or from the date the demand or offer was rejected  
12 without counter offer, whichever is earlier. Any such demand or  
13 offer shall be made in writing and sent by certified mail and  
14 shall be left open for sixty days unless rejected earlier.  
15 Nothing contained herein shall limit the right of a claimant, in  
16 actions other than tort actions, to recover prejudgment interest  
17 as otherwise provided by law or contract. The state courts  
18 administrator shall distribute notice of such rate and any  
19 changes in such rate to the circuit clerks of all circuit courts  
20 in Missouri.

21 430.225. 1. As used in sections 430.225 to 430.250, the  
22 following terms shall mean:

23 (1) "Claim", a claim of a patient for:

24 (a) Damages from a tort-feasor; or

25 (b) Benefits from an insurance carrier;



1       (2) "Clinic", a group practice of health practitioners or a  
2       sole practice of a health practitioner who has incorporated his  
3       or her practice;

4       (3) "Health practitioner", a chiropractor licensed pursuant  
5       to chapter 331, RSMo, a podiatrist licensed pursuant to chapter  
6       330, RSMo, a dentist licensed pursuant to chapter 332, RSMo, a  
7       physician or surgeon licensed pursuant to chapter 334, RSMo, or  
8       an optometrist licensed pursuant to chapter 336, RSMo, while  
9       acting within the scope of their practice;

10       (4) "Insurance carrier", any person, firm, corporation,  
11       association or aggregation of persons conducting an insurance  
12       business pursuant to chapter 375, 376, 377, 378, 379, 380, 381 or  
13       383, RSMo;

14       (5) "Other institution", a legal entity existing pursuant  
15       to the laws of this state which delivers treatment, care or  
16       maintenance to patients who are sick or injured;

17       (6) "Patient", any person to whom a health practitioner,  
18       hospital, clinic or other institution delivers treatment, care or  
19       maintenance for sickness or injury caused by a tort-feasor from  
20       whom such person seeks damages or any insurance carrier which has  
21       insured such tort-feasor.

22       2. Clinics, health practitioners and other institutions, as  
23       defined in this section shall have the same rights granted to  
24       hospitals in sections 430.230 to 430.250.

25       3. If the liens of such health practitioners, hospitals,

1 clinics or other institutions exceed fifty percent of the amount  
2 due the patient, every health care practitioner, hospital, clinic  
3 or other institution giving notice of its lien, as aforesaid,  
4 shall share in up to fifty percent of the net proceeds due the  
5 patient, in the proportion that each claim bears to the total  
6 amount of all other liens of health care practitioners,  
7 hospitals, clinics or other institutions. "Net proceeds", as  
8 used in this section, means the amount remaining after the  
9 payment of contractual attorney fees, if any, and other expenses  
10 of recovery.

11 4. In administering the lien of the health care provider,  
12 the insurance carrier may pay the amount due secured by the lien  
13 of the health care provider directly, if the claimant authorizes  
14 it and does not challenge the amount of the customary charges or  
15 that the treatment provided was for injuries caused by the  
16 tort-feasor.

17 5. Any health care provider electing to receive benefits  
18 hereunder releases the claimant from further liability on the  
19 cost of the services and treatment provided to that point in  
20 time.

21 508.010. Suits instituted by summons shall, except as  
22 otherwise provided by law, be brought:

23 (1) When the defendant is a resident of the state, either  
24 in the county within which the defendant resides, or in the  
25 county within which the plaintiff resides, and the defendant may

1 be found;

2 (2) When there are several defendants, and they reside in  
3 different counties, the suit may be brought in any such county;

4 (3) When there are several defendants, some residents and  
5 others nonresidents of the state, suit may be brought in any  
6 county in this state in which any defendant resides;

7 (4) When all the defendants are nonresidents of the state,  
8 suit may be brought in any county in this state;

9 (5) Any action, local or transitory, in which any county  
10 shall be plaintiff, may be commenced and prosecuted to final  
11 judgment in the county in which the defendant or defendants  
12 reside, or in the county suing and where the defendants, or one  
13 of them, may be found;

14 (6) In all tort actions, including tort actions based upon  
15 improper health care, except as provided in section 508.070, the  
16 suit may only be brought in the county where the cause of action  
17 accrued regardless of the residence of the parties, and process  
18 therein shall be issued by the court of such county and may be  
19 served in any county within the state; provided, however, that in  
20 any action for defamation or for invasion of privacy the cause of  
21 action shall be deemed to have accrued in the county in which the  
22 defamation or invasion was first published.

23 (7) The residence of a corporation for venue purpose shall  
24 be in the county where the office of its registered agent as  
25 reported pursuant to chapter 351, RSMo, is located, or the

1 corporation's principal place of business in the state of  
2 Missouri. The term "principal place of business" shall mean the  
3 county in which the largest number of the corporation's Missouri  
4 employees performed their primary work activity during the year  
5 in which the cause of action accrued. If the corporation has not  
6 reported or maintained a registered agent, then the residence of  
7 the corporation shall be Cole County.

8 508.040. Suits against corporations shall be commenced  
9 either in the county where the cause of action accrued or in the  
10 county where the corporation resides. Notwithstanding any other  
11 statute to the contrary, the residence of a foreign or domestic  
12 corporation for all purposes of this chapter shall be deemed the  
13 county where the office of its registered agent as reported  
14 pursuant to chapter 351, RSMo, is located, or the corporation's  
15 principal place of business in the state of Missouri. The term  
16 "principal place of business" shall mean the county in which the  
17 largest number of the corporation's Missouri employees performed  
18 their primary work activity during the year in which the cause of  
19 action accrued. If the corporation has not reported or  
20 maintained a registered agent, then the residence of the  
21 corporation shall be Cole County[, or in case the corporation  
22 defendant is a railroad company owning, controlling or operating  
23 a railroad running into or through two or more counties in this  
24 state, then in either of such counties, or in any county where  
25 such corporations shall have or usually keep an office or agent

1 for the transaction of their usual and customary business].

2 508.120. 1. No defendant shall be allowed a change of  
3 venue and no application by a defendant to disqualify a judge  
4 shall be granted unless the application therefor is made before  
5 the filing of his or her answer to the merits, except when the  
6 cause for the change of venue or disqualification arises, or  
7 information or knowledge of the existence thereof first comes to  
8 [him] the defendant, after the filing of his or her answer in  
9 which case the application shall state the time when the cause  
10 arose or when applicant acquired information and knowledge  
11 thereof, and the application must be made within [five] thirty  
12 days thereafter.

13 2. In all actions, if the plaintiff amends the petition to  
14 name an additional defendant which would have, if initially named  
15 a defendant, rendered venue inappropriate in the court where the  
16 action was initially filed, then venue shall, upon motion of any  
17 defendant, be transferred to a venue which would be an  
18 appropriate venue if the new defendant had been initially named a  
19 defendant.

20 510.263. 1. All actions tried before a jury involving  
21 punitive damages, including tort actions based upon improper  
22 health care, shall be conducted in a bifurcated trial before the  
23 same jury if requested by any party.

24 2. In the first stage of a bifurcated trial, in which the  
25 issue of punitive damages is submissible, the jury shall

1 determine liability for compensatory damages, the amount of  
2 compensatory damages, including nominal damages, and the  
3 liability of a defendant for punitive damages. Evidence of  
4 defendant's financial condition shall not be admissible in the  
5 first stage of such trial unless admissible for a proper purpose  
6 other than the amount of punitive damages.

7 3. If during the first stage of a bifurcated trial the jury  
8 determines that a defendant is liable for punitive damages, that  
9 jury shall determine, in a second stage of trial, the amount of  
10 punitive damages to be awarded against such defendant. Evidence  
11 of such defendant's net worth shall be admissible during the  
12 second stage of such trial.

13 4. Within the time for filing a motion for new trial, a  
14 defendant may file a post-trial motion requesting the amount  
15 awarded by the jury as punitive damages be credited by the court  
16 with amounts previously paid by the defendant for punitive  
17 damages arising out of the same conduct on which the imposition  
18 of punitive damages is based. At any hearing, the burden on all  
19 issues relating to such a credit shall be on the defendant and  
20 either party may introduce relevant evidence on such motion.  
21 Such a motion shall be determined by the trial court within the  
22 time and according to procedures applicable to motions for new  
23 trial. If the trial court sustains such a motion the trial court  
24 shall credit the jury award of punitive damages by the amount  
25 found by the trial court to have been previously paid by the

1 defendant arising out of the same conduct and enter judgment  
2 accordingly. If the defendant fails to establish entitlement to  
3 a credit under the provisions of this section, or the trial court  
4 finds from the evidence that the defendant's conduct out of which  
5 the prior punitive damages award arose was not the same conduct  
6 on which the imposition of punitive damages is based in the  
7 pending action, or the trial court finds the defendant  
8 unreasonably continued the conduct after acquiring actual  
9 knowledge of the dangerous nature of such conduct, the trial  
10 court shall disallow such credit, or, if the trial court finds  
11 that the laws regarding punitive damages in the state in which  
12 the prior award of punitive damages was entered substantially and  
13 materially deviate from the law of the state of Missouri and that  
14 the nature of such deviation provides good cause for disallowance  
15 of the credit based on the public policy of Missouri, then the  
16 trial court may disallow all or any part of the credit provided  
17 by this section.

18 5. The credit allowable under this section shall not apply  
19 to causes of action for libel, slander, assault, battery, false  
20 imprisonment, criminal conversation, malicious prosecution or  
21 fraud.

22 6. The doctrines of remittitur and additur, based on the  
23 trial judge's assessment of the totality of the surrounding  
24 circumstances, shall apply to punitive damage awards.

25 7. As used in this section, the term "punitive damage

1 award" means an award for punitive or exemplary damages or an  
2 award for aggravating circumstances.

3 8. Discovery as to a defendant's assets shall be allowed  
4 only after a finding by the trial court that it is more likely  
5 than not that the plaintiff will be able to present a submissible  
6 case to the trier of fact on the plaintiff's claim of punitive  
7 damages.

8 9. No award of punitive damages against any defendant shall  
9 exceed the greater of:

10 (1) Five hundred thousand dollars; or

11 (2) Five times the net amount of the judgment awarded to  
12 the plaintiff against the defendant; or

13 (3) Five percent of the defendant's net worth.

14 Such limitations shall not apply if the state of Missouri is the  
15 plaintiff requesting the award of punitive damages, or the  
16 defendant pleads guilty to or is convicted of a felony arising  
17 out of the acts or omissions pled by the plaintiff and found by  
18 the civil court or jury on behalf of the plaintiff and against  
19 the defendant.

20 10. Punitive damages shall only be awarded upon a showing  
21 by clear and convincing evidence that a defendant's actions:

22 (1) Were willful, wanton, or malicious; or

23 (2) Were in violation of a statute of the state of Missouri  
24 or another state if the punishment for such violation is one year



1 or more imprisonment; or

2 (3) Included the sale or manufacture of a defective product  
3 with deliberate indifference to the threat of great bodily harm  
4 to the plaintiff or others in a similar position. Indifference  
5 shall be deliberate only if the defendant had actual knowledge of  
6 the dangerous nature of its act at the time of commission of the  
7 act.

8 11. A showing by the defendant, by a preponderance of the  
9 evidence, that it was in full compliance with all applicable  
10 governmental and industry standards in its actions at the time of  
11 the alleged act shall constitute a rebuttable presumption that  
12 punitive damages shall not be awarded.

13 512.023. Any order certifying a class in a class action law  
14 suit pursuant to section 507.070, RSMo, shall be a final and  
15 appealable judgment.

16 512.099. 1. The supersedeas bond that an appellant is  
17 required to post to stay execution on a judgment during the  
18 period an appeal is pending shall be determined in accordance  
19 with applicable provisions of the Missouri statutes and court  
20 rules, except that the supersedeas bond shall not exceed fifty  
21 million dollars regardless of the value of the judgment.

22 2. If at any time during the appeal the court of appeals  
23 shall find by a preponderance of the evidence that the appellant  
24 is dissipating, transferring, encumbering, diminishing, or  
25 concealing any of its assets, the court shall require the

1 appellant to post a bond equal to the full amount of the  
2 judgment. If a bond has been capped at fifty million dollars  
3 pursuant to this section and any part of the judgment in excess  
4 of fifty million dollars is upheld by an appellate court, the  
5 appellant shall thereafter be required to file a supersedeas bond  
6 in the full amount of such judgment as a condition of staying  
7 execution for purposes of further appeals.

8       516.170. Except as provided in section 516.105, if any  
9 person entitled to bring an action in sections 516.100 to  
10 ~~[516.370]~~ 516.371 specified, at the time the cause of action  
11 accrued be either within the age of twenty-one years, or mentally  
12 incapacitated, such person shall be at liberty to bring such  
13 actions within the respective times in sections 516.100 to  
14 ~~[516.370]~~ 516.371 limited after such disability is removed;  
15 provided, however, that in no event may the extension of time to  
16 file the cause of action granted pursuant to this section be  
17 greater than ten years for any cause of action that accrued after  
18 August 28, 2000.

19       516.600. Any action to recover damages from injury or  
20 illness caused by childhood sexual abuse in an action brought  
21 pursuant to section 537.046, RSMo, shall be commenced within ten  
22 years of the plaintiff attaining the age of twenty-one or within  
23 three years of the date of discovering, or reasonably should have  
24 discovered, that the injury or illness was caused by childhood  
25 sexual abuse, whichever later occurs.

1           537.067. [1.] In all tort actions for damages[, in which  
2       fault is not assessed to the plaintiff], [the defendants] a  
3       defendant shall be jointly and severally liable for the amount of  
4       [the judgment] compensatory damages and noneconomic damages  
5       rendered against such [defendants] defendant if such defendant  
6       is found to bear twenty percent or more of fault. A defendant  
7       may not be jointly or severally liable for more than the  
8       percentage of punitive damages for which fault is attributed to  
9       such defendant by the trier of fact. No percentage of fault  
10      allocated to any plaintiff may be reallocated to any defendant.

11           [2. In all tort actions for damages in which fault is  
12      assessed to plaintiff the defendants shall be jointly and  
13      severally liable for the amount of the judgment rendered against  
14      such defendants except as follows:

15           (1) In all such actions in which the trier of fact assesses  
16      a percentage of fault to the plaintiff, any party, including the  
17      plaintiff, may within thirty days of the date the verdict is  
18      rendered move for reallocation of any uncollectible amounts;

19           (2) If such a motion is filed the court shall determine  
20      whether all or part of a party's equitable share of the  
21      obligation is uncollectible from that party, and shall reallocate  
22      any uncollectible amount among the other parties, including a  
23      claimant at fault, according to their respective percentages of  
24      fault;

25           (3) The party whose uncollectible amount is reallocated is

1       nonetheless subject to contribution and to any continuing  
2       liability to the claimant on the judgment;

3           (4) No amount shall be reallocated to any party whose  
4       assessed percentage of fault is less than the plaintiff's so as  
5       to increase that party's liability by more than a factor of two;

6           (5) If such a motion is filed, the parties may conduct  
7       discovery on the issue of collectibility prior to a hearing on  
8       such motion;

9           (6) Any order of reallocation pursuant to this section  
10      shall be entered within one hundred twenty days after the date of  
11      filing such a motion for reallocation. If no such order is  
12      entered within that time, such motion shall be deemed to be  
13      overruled;

14          (7) Proceedings on a motion for reallocation shall not  
15      operate to extend the time otherwise provided for post-trial  
16      motion or appeal on other issues.

17      Any appeal on an order or denial of reallocation shall be taken  
18      within the time provided under applicable rules of civil  
19      procedure and shall be consolidated with any other appeal on  
20      other issues in the case.

21          3. This section shall not be construed to expand or  
22      restrict the doctrine of joint and several liability except for  
23      reallocation as provided in subsection 2.]

24          537.327. 1. As used in this section, unless the context  
25      provides otherwise, the following terms shall mean:

1       (1) "Canoe", a watercraft which has an open top and is  
2 designed to hold one or more participants;

3       (2) "Canoeing, rafting, kayaking, or tubing", riding in or  
4 on, training in or on, using, paddling, or being a passenger in  
5 or on a canoe, kayak, raft, or tube including a person assisting  
6 a participant;

7       (3) "Equipment", any accessory to a watercraft which is  
8 used for propulsion, safety, comfort, or convenience including  
9 but not limited to paddles, oars, and personal floatation  
10 devices;

11       (4) "Inherent risks of paddlesport activities", those  
12 dangers, hazards, or conditions which are an integral part of  
13 paddlesport activities in Missouri's free-flowing streams or  
14 rivers, including but not limited to:

15       (a) Risks typically associated with watercraft including  
16 change in water flow or current, submerged, semi-submerged, and  
17 overhanging objects, capsizing, swamping, or sinking of  
18 watercraft and resultant injury, hypothermia, or drowning;

19       (b) Cold weather or heat-related injuries and illnesses  
20 including hypothermia, frostbite, heat exhaustion, heat stroke,  
21 and dehydration;

22       (c) An "act of nature" which may include rock fall,  
23 inclement weather, thunder and lightning, severe or varied  
24 temperature, weather conditions, and winds including tornadoes;

25       (d) Equipment failure or operator error;

1       (e) Attack or bite by animals;

2       (f) The aggravation of injuries or illnesses because they  
3 occurred in remote places where there are no available medical  
4 facilities;

5       (5) "Kayak", a watercraft similar to a canoe with a covered  
6 top which may have more than one circular opening to hold  
7 participants, or designed to permit a participant to sit on top  
8 of an enclosed formed seat;

9       (6) "Outfitter", any individual, group, club, partnership,  
10 corporation, or business entity, whether or not operating for  
11 profit or not-for-profit, or any employee or agent, which  
12 sponsors, organizes, rents, or provides to the general public,  
13 the opportunity to use any watercraft by a participant on  
14 Missouri's free-flowing streams or rivers;

15       (7) "Paddlesport activity", canoeing, rafting, or kayaking  
16 in or on a watercraft as follows:

17       (a) A competition, exercise, or undertaking that involves a  
18 watercraft;

19       (b) Training or teaching activities;

20       (c) A ride, trip, tour, or other activity, however informal  
21 or impromptu, whether or not a fee is paid, that is sponsored by  
22 an outfitter;

23       (d) A guided trip, tour or other activity, whether or not a  
24 fee is paid, that is sponsored by an outfitter;

25       (8) "Participant", any person, whether amateur or

1 professional, whether or not a fee is paid, which rents, leases,  
2 or uses watercraft or is a passenger on a rented, leased, or used  
3 watercraft participating in a paddlesport activity;

4 (9) "Personal floatation device", a life jacket, floatable  
5 cushion, or other device approved by the United States Coast  
6 Guard;

7 (10) "Raft", an inflatable watercraft which has an open top  
8 and is designed to hold one or more participants;

9 (11) "Tube", an inflatable tire inner tube or similar  
10 inflatable watercraft which has an open top capable of holding  
11 one or more participants;

12 (12) "Watercraft", any canoe, kayak, raft, or tube  
13 propelled by the use of paddles, oars, hands, poles, or other  
14 nonmechanical, nonmotorized means of propulsion.

15 2. Except as provided in subsection 4 of this section, an  
16 outfitter shall not be liable for any injury to or the death of a  
17 participant resulting from the inherent risks of paddlesport  
18 activities and, except as provided in subsection 4 of this  
19 section, no participant or a participant's representative shall  
20 make any claim against, maintain any action against, or recover  
21 from an outfitter for injury, loss, damage, or death of the  
22 participant resulting from any of the inherent risks of  
23 paddlesport activities.

24 3. This section shall not apply to any employer-employee  
25 relationship governed by the provisions of chapter 287, RSMo.

1       4. The provisions of subsection 2 of this section shall not  
2 prevent or limit the liability of an outfitter that:

3       (1) Intentionally injures the participant;

4       (2) Commits an act or omission that constitutes negligence  
5 for the safety of a participant in a paddlesport activity and  
6 that negligence is the proximate cause of the injury or death of  
7 a participant;

8       (3) Provides unsafe equipment or watercraft to a  
9 participant and knew or should have known that the equipment or  
10 watercraft was unsafe to the extent that it did cause the injury;

11       (4) Fails to provide a participant a United States Coast  
12 Guard approved personal floatation device; or

13       (5) Fails to use that degree of care that an ordinarily  
14 careful and prudent person would use under the same or similar  
15 circumstances.

16       5. Every outfitter shall post and maintain signs which  
17 contain the warning notice specified in this subsection. Such  
18 signs shall be placed in a clearly visible location on or near  
19 areas where the outfitter conducts paddlesport activities. The  
20 warning notice specified in this subsection shall appear on the  
21 sign in black letters on a white background with each letter to  
22 be a minimum of one inch in height. Every written contract  
23 entered into by an outfitter for the providing of watercraft to a  
24 participant shall contain the warning notice specified in this  
25 subsection. The signs and contracts described in this subsection



1 shall contain the following warning notice:

2 "WARNING

3 Under Missouri law, an outfitter is not liable for an injury to  
4 or the death of a participant in paddlesport activities resulting  
5 from the inherent risks of paddlesport activities pursuant to the  
6 Revised Statutes of Missouri."

7 6. This section shall not be construed to limit or modify  
8 any defense or immunity already existing in statute or common law  
9 or to affect any claim occurring prior to August 28, 2003.

10 537.530. 1. In any action for damages in excess of three  
11 thousand dollars against an individual or entity licensed to  
12 practice a profession by this state, or any agency or court  
13 thereof, on account of the rendering of or failure to render  
14 professional services, the plaintiff or his or her attorney shall  
15 file an affidavit with the court stating that he or she has  
16 obtained the written opinion of a similarly licensed professional  
17 which states that the defendant failed to use such care as a  
18 reasonably prudent and careful professional would have under  
19 similar circumstances and that such failure to use such  
20 reasonable care directly caused or directly contributed to cause  
21 the damages claimed in the petition.

22 2. The affidavit shall state the name, address, and  
23 qualifications of all similarly licensed professionals offering  
24 such opinion.

25 3. A separate affidavit shall be filed for each defendant

1 named in the petition.

2 4. Such affidavit shall be filed no later than ninety days  
3 after the filing of the petition unless the court, for good cause  
4 shown, orders that such time be extended for a period of time not  
5 to exceed an additional ninety days.

6 5. If the plaintiff or his or her attorney fails to file  
7 such affidavit the court shall, upon motion of any party, dismiss  
8 the action against such moving party without prejudice.

9 6. "License" for purposes of this section shall not include  
10 a license to operate a vehicle.

11 7. "Similarly licensed professional" for purposes of this  
12 section shall mean an individual licensed in this state, or any  
13 other state, who possesses the education, training, and  
14 experience to be licensed in the same or substantially the same  
15 profession as the defendant.

16 537.768. Notwithstanding any other law to the contrary, no  
17 attorney representing a class in a class action lawsuit relating  
18 in any way to a tort action shall contract for, charge or collect  
19 an amount for attorney fees representing more than ten percent of  
20 value of any judgment or settlement actually collected by the  
21 members of the class. The term "actually collected" means the  
22 actual receipt by the class members of the following:

23 (1) Cash or cash equivalent;

24 (2) If payment is in the form of a coupon for a free item,  
25 the current retail value of the number of coupons actually

1 redeemed by the class members;

2 (3) If payment is in the form of a discount or price  
3 reduction or rate reduction, the difference between the price  
4 paid by class members and the price paid by nonclass members for  
5 the same product during the redemption period, multiplied by the  
6 number of members of the class who actually redeem their  
7 discount.

8 537.770. The attorney general or any state agency shall not  
9 enter into any contingency fee agreement in an amount in excess  
10 of one million dollars or any agreement providing any incentive  
11 bonus in an amount in excess of one million dollars with any  
12 attorney regarding any claim relating in any manner to a tort  
13 action.

14 538.205. As used in sections 538.205 to 538.230, the  
15 following terms shall mean:

16 (1) "Economic damages", damages arising from pecuniary harm  
17 including, without limitation, medical damages, and those damages  
18 arising from lost wages and lost earning capacity;

19 (2) "Equitable share", the share of a person or entity in  
20 an obligation that is the same percentage of the total obligation  
21 as the person's or entity's allocated share of the total fault,  
22 as found by the trier of fact;

23 (3) "Future damages", damages that the trier of fact finds  
24 will accrue after the damages findings are made;

25 (4) "Health care provider", any physician, hospital, health

1 maintenance organization, ambulatory surgical center, long-term  
2 care facility including those licensed under chapter 198, RSMo,  
3 dentist, registered or licensed practical nurse, optometrist,  
4 podiatrist, pharmacist, chiropractor, professional physical  
5 therapist, psychologist, physician-in-training, and any other  
6 person or entity that provides health care services under the  
7 authority of a license or certificate;

8 (5) "Health care services", any services that a health care  
9 provider renders to a patient in the ordinary course of the  
10 health care provider's profession or, if the health care provider  
11 is an institution, in the ordinary course of furthering the  
12 purposes for which the institution is organized. Professional  
13 services shall include, but are not limited to, transfer to a  
14 patient of goods or services incidental or pursuant to the  
15 practice of the health care provider's profession or in  
16 furtherance of the purposes for which an institutional health  
17 care provider is organized;

18 (6) "Medical damages", damages arising from reasonable  
19 expenses for necessary drugs, therapy, and medical, surgical,  
20 nursing, x-ray, dental, custodial and other health and  
21 rehabilitative services;

22 (7) "Noneconomic damages", damages arising from  
23 nonpecuniary harm including, without limitation, pain, suffering,  
24 mental anguish, inconvenience, physical impairment,  
25 disfigurement, loss of capacity to enjoy life, and loss of

1 consortium but shall not include punitive damages;

2 (8) "Past damages", damages that have accrued when the  
3 damages findings are made;

4 (9) "Physician employee", any person or entity who works  
5 for hospitals for a salary or under contract and who is covered  
6 by a policy of insurance or self-insurance by a hospital for acts  
7 performed at the direction or under control of the hospital;

8 (10) "Punitive damages", damages intended to punish or  
9 deter willful, wanton or malicious misconduct, including  
10 exemplary damages and damages for aggravating circumstances;

11 (11) "Self-insurance", a formal or informal plan of  
12 self-insurance or no insurance of any kind.

13 538.210. 1. In any action against a health care provider  
14 for damages for personal injury or death arising out of the  
15 rendering of or the failure to render health care services, no  
16 plaintiff shall recover more than three hundred fifty thousand  
17 dollars [per occurrence] for noneconomic damages from any one  
18 defendant as defendant is defined in subsection 2 of this  
19 section.

20 2. "Defendant" for purposes of sections 538.205 to 538.230  
21 shall be defined as:

22 (1) A hospital as defined in chapter 197, RSMo, and its  
23 employees and physician employees who are insured under the  
24 hospital's professional liability insurance policy or the  
25 hospital's self-insurance maintained for professional liability

1 purposes;

2 (2) A physician, including his nonphysician employees who  
3 are insured under the physician's professional liability  
4 insurance or under the physician's self-insurance maintained for  
5 professional liability purposes;

6 (3) Any other health care provider, including but not  
7 limited to a facility licensed under chapter 198, RSMo, having  
8 the legal capacity to sue and be sued and who is not included in  
9 subdivisions (1) and (2) of this subsection, including employees  
10 of any health care providers who are insured under the health  
11 care provider's professional liability insurance policy or  
12 self-insurance maintained for professional liability purposes;

13 (4) All individuals or entities whose liability is based  
14 solely upon an act or omission of an agent, servant, or employee  
15 shall, for purposes of subsection 1 of this section, be  
16 considered the same defendant as the agent, servant, or employee.

17 3. In any action against a health care provider for damages  
18 for personal injury or death arising out of the rendering of or  
19 the failure to render health care services, where the trier of  
20 fact is a jury, such jury shall not be instructed by the court  
21 with respect to the limitation on an award of noneconomic  
22 damages, nor shall counsel for any party or any person providing  
23 testimony during such proceeding in any way inform the jury or  
24 potential jurors of such limitation.

25 4. Beginning on August 28, 2008, the limitation on awards

1 for noneconomic damages provided for in this section shall be  
2 increased or decreased on an annual basis effective January first  
3 of each year in accordance with the Implicit Price Deflator for  
4 Personal Consumption Expenditures as published by the Bureau of  
5 Economic Analysis of the United States Department of Commerce.  
6 The current value of the limitation shall be calculated by the  
7 director of the department of insurance, who shall furnish that  
8 value to the secretary of state, who shall publish such value in  
9 the Missouri Register as soon after each January first as  
10 practicable, but it shall otherwise be exempt from the provisions  
11 of section 536.021, RSMo.

12 5. [Any provision of law or court rule to the contrary  
13 notwithstanding, an award of punitive damages against a health  
14 care provider governed by the provisions of sections 538.205 to  
15 538.230 shall be made only upon a showing by a plaintiff that the  
16 health care provider demonstrated willful, wanton or malicious  
17 misconduct with respect to his actions which are found to have  
18 injured or caused or contributed to cause the damages claimed in  
19 the petition.] For purposes of sections 538.205 to 538.230, all  
20 individuals and entities asserting a claim for a wrongful death  
21 pursuant to section 537.080, RSMo, shall be considered to be one  
22 plaintiff.

23 538.213. 1. Any physician licensed pursuant to chapter  
24 334, RSMo, or dentist licensed pursuant to chapter 332, RSMo, or  
25 hospital, or employee of a hospital as defined in section

1 197.020, RSMo, or other health care provider as defined in  
2 section 538.205, RSMo, who renders any care or assistance in a  
3 hospital shall not be held liable for more than one hundred fifty  
4 thousand dollars in civil damages, exclusive of interest computed  
5 from the date of judgment, to or for the benefit of any claimant  
6 arising out of any act or omission in rendering that care or  
7 assistance when:

8 (1) The care or assistance is rendered in a hospital  
9 emergency room;

10 (2) The care or assistance rendered is necessitated by a  
11 traumatic injury demanding immediate medical attention for which  
12 the patient enters the hospital through its emergency room or  
13 trauma center; and

14 (3) The care or assistance is rendered in good faith and in  
15 a manner not amounting to gross negligence or reckless, willful,  
16 or wanton conduct.

17 2. The limitation on liability provided pursuant to this  
18 section does not apply to any act or omission in rendering care  
19 or assistance which:

20 (1) Occurs after the patient is stabilized and is capable  
21 of receiving medical treatment as a nonemergency patient; or

22 (2) Is unrelated to the original traumatic injury.

23 3. A rebuttable presumption that the medical condition was  
24 the result of the original traumatic injury and that the  
25 limitation on liability provided by subsection 1 of this section



1 shall apply with respect to the medical condition that arises  
2 during the course of the follow-up care, if:

3 (1) A physician or dentist provides a follow-up care to a  
4 patient to whom he or she rendered care or assistance pursuant to  
5 subsection 1 of this section;

6 (2) A medical condition arises during the course of the  
7 follow-up care that is directly related to the original traumatic  
8 injury for which care or assistance was rendered pursuant to  
9 subsection 1 of this section; and

10 (3) The patient files an action for damages based on the  
11 medical condition that arises during the course of the follow-up  
12 care.

13 4. For the purposes of this section, the following terms  
14 mean:

15 (1) "Reckless, willful, or wanton conduct", as it applies  
16 to a person to whom subsection 1 of this section applies, is  
17 deemed to be that conduct which the person knew or should have  
18 known at the time he or she rendered the care or assistance would  
19 be likely to result in injury so as to affect the life or health  
20 of another person, taking into consideration to the extent  
21 applicable:

22 (a) The extent or serious nature of the prevailing  
23 circumstances;

24 (b) The lack of time or ability to obtain appropriate  
25 consultation;

1        (c) The lack of a prior medical relationship with the  
2        patient;

3        (d) The inability to obtain an appropriate medical history  
4        of the patient; and

5        (e) The time constraints imposed by coexisting emergencies;

6        (2) "Traumatic injury", any acute injury which, according  
7        to standardized criteria for triage in the field, involves a  
8        significant risk of death or the precipitation of complications  
9        or disabilities.

10        538.225. 1. In any action against a health care provider  
11        for damages for personal injury or death on account of the  
12        rendering of or failure to render health care services, the  
13        plaintiff or [his] the plaintiff's attorney shall file an  
14        affidavit with the court stating that he or she has obtained the  
15        written opinion of a legally qualified health care provider which  
16        states that the defendant health care provider failed to use such  
17        care as a reasonably prudent and careful health care provider  
18        would have under similar circumstances and that such failure to  
19        use such reasonable care directly caused or directly contributed  
20        to cause the damages claimed in the petition.

21        2. The affidavit shall state the name and address of all  
22        health care providers offering such opinion and the  
23        qualifications of such health care providers to offer such  
24        opinion.

25        3. A separate affidavit shall be filed for each defendant

1 named in the petition.

2 4. Such affidavit shall be filed no later than ninety days  
3 after the filing of the petition unless the court, for good cause  
4 shown, orders that such time be extended for a period of time not  
5 to exceed an additional ninety days.

6 5. If the plaintiff or his attorney fails to file such  
7 affidavit the court [may] shall, upon motion of any party,  
8 dismiss the action against such moving party without prejudice.

9 6. As used in this section, the term "legally qualified  
10 health care provider" means a health care provider licensed in  
11 this state or any other state in substantially the same  
12 profession and specialty, including certifications, as the  
13 defendant.

14 538.227. 1. The portion of statements, writings, or  
15 benevolent gestures expressing sympathy or a general sense of  
16 benevolence relating to the pain, suffering, or death of a person  
17 and made to that person or to the family of that person shall be  
18 inadmissible as evidence of an admission of liability in a civil  
19 action. A statement of fault, however, which is part of, or in  
20 addition to, any of the provisions of this subsection shall not  
21 be inadmissible pursuant to this section.

22 2. For the purposes of this section:

23 (1) "Benevolent gestures", actions which convey a sense of  
24 compassion or commiseration emanating from humane impulses;

25 (2) "Family", the spouse, parent, grandparent, stepmother,

1 stepfather, child, grandchild, brother, sister, half brother,  
2 half sister, lifetime partner or significant other, adopted  
3 children of a parent, or spouse's parents of an injured party.

4 538.301. The records, written proceedings or documents of a  
5 quality assessment and assurance committee formed pursuant to  
6 federal law 42 U.S.C. Section 1395i-3(b)(1)(B) or 42 U.S.C.  
7 Section 1396r(b)(1)(B) shall be confidential and absolutely  
8 privileged and shall not be subject to discovery, subpoena, or  
9 other means of legal compulsion for their release to any person  
10 nor are they admissible in any criminal, civil, or administrative  
11 proceeding. No person shall be civilly liable as a result of his  
12 or her acts, omissions or decisions done in good faith as a  
13 member of a quality assessment and assurance committee in  
14 connection with such person's duties therefor. No person who  
15 reviews or creates documents, records or reports of a quality  
16 assessment and assurance committee or participates in any  
17 proceeding that reviews or creates such documents, records or  
18 reports may be required to testify in any criminal, civil or  
19 administrative proceeding with respect to such documents, records  
20 or reports or with respect to any finding, proceeding,  
21 recommendation, evaluation, opinion or action taken by such  
22 person or such committee in connection with such documents,  
23 records or reports.

24 Section 1. 1. Any person may file a miscellaneous case for  
25 purpose of securing copies of their health care records or the

1 health care records of any other person for whom he or she is the  
2 guardian or attorney-in-fact or is a potential claimant for a  
3 wrongful death.

4 2. A miscellaneous case shall be filed in the circuit in  
5 which any of the health care records sought to be obtained are  
6 located.

7 3. (1) The petition shall contain the following:

8 (a) The name of the individual who received the health care  
9 services or medical treatment;

10 (b) A brief summary of the health care services or medical  
11 treatment received;

12 (c) A brief summary of the outcome of the health care  
13 services or medical treatment; and

14 (d) The names of the health care providers from whom health  
15 care records are being sought.

16 (2) The petition shall not contain:

17 (a) Allegations of negligence; or

18 (b) Demands, other than a general demand for access to  
19 health care records.

20 4. Within five days of filing the miscellaneous case, the  
21 petitioner shall mail a copy of the petition by regular and  
22 certified mail to each health care provider listed in the  
23 petition. The petitioner shall certify to the court that the  
24 petition has been mailed as required.

25 5. After filing a miscellaneous case, the petitioner may

1 request the health care records described in subsection 1 of this  
2 section by subpoena and, if necessary, subpoena the health care  
3 records custodian for a deposition for the sole purpose of  
4 securing copies of the health care records and verifying their  
5 authenticity. Refusal to provide the requested records may be  
6 the basis for the court to impose sanctions or orders of  
7 contempt.

8 6. Filing of a miscellaneous case petition shall toll the  
9 applicable statute of limitations for one hundred twenty days on  
10 any claim for injuries or death caused by professional negligence  
11 of a health care provider, but in no event shall the applicable  
12 statute of limitations be tolled pursuant to this section for  
13 more than one hundred twenty days.

14 7. The naming or listing of a health care provider as a  
15 person from whom records are requested shall not be considered  
16 for any reporting purposes as a claim made against the health  
17 care provider.

18 8. A health care provider, or any person or entity acting  
19 on behalf of a health care provider shall not charge more than is  
20 allowable pursuant to section 197.227, RSMo, for providing copies  
21 of health care records.

22 Section 2. If any provision of this act is found by a court  
23 of competent jurisdiction to be invalid or unconstitutional it is  
24 the stated intent of the legislature that the legislature would  
25 have approved the remaining portions of the act, and the

1 remaining portions of the act shall remain in full force and  
2 effect.

3 Section 3. The provisions of this act shall only apply to  
4 causes of action filed after August 28, 2003.

5 Section 4. Neither participants nor witnesses in a peer  
6 review process or hospital review process or similar review for  
7 quality health care shall have any liability for their actions or  
8 statements in such review proceedings unless their actions or  
9 statements were performed willfully or maliciously.

10 [430.225. 1. As used in sections  
11 430.225 to 430.250, the following terms shall  
12 mean:

13 (1) "Claim", a claim of a patient for:  
14 (a) Damages from a tort-feasor; or  
15 (b) Benefits from an insurance carrier;  
16 (2) "Clinic", a group practice of  
17 health practitioners or a sole practice of a  
18 health practitioner who has incorporated his  
19 or her practice;

20 (3) "Health practitioner", a  
21 chiropractor licensed pursuant to chapter  
22 331, RSMo, a podiatrist licensed pursuant to  
23 chapter 330, RSMo, a dentist licensed  
24 pursuant to chapter 332, RSMo, a physician or  
25 surgeon licensed pursuant to chapter 334,  
26 RSMo, or an optometrist licensed pursuant to  
27 chapter 336, RSMo, while acting within the  
28 scope of their practice;

29 (4) "Insurance carrier", any person,  
30 firm, corporation, association or aggregation  
31 of persons conducting an insurance business  
32 pursuant to chapter 375, 376, 377, 378, 379,  
33 380, 381 or 383, RSMo;

34 (5) "Other institution", a legal entity  
35 existing pursuant to the laws of this state  
36 which delivers treatment, care or maintenance  
37 to patients who are sick or injured;

38 (6) "Patient", any person to whom a  
39 health practitioner, hospital, clinic or  
40 other institution delivers treatment, care or  
41 maintenance for sickness or injury caused by

1 a tort-feasor from whom such person seeks  
2 damages or any insurance carrier which has  
3 insured such tort-feasor.

4 2. Clinics, health practitioners and  
5 other institutions, as defined in this  
6 section shall have the same rights granted to  
7 hospitals in sections 430.230 to 430.250.

8 3. If the liens of such health  
9 practitioners, hospitals, clinics or other  
10 institutions exceed fifty percent of the  
11 amount due the patient, every health care  
12 practitioner, hospital, clinic or other  
13 institution giving notice of its lien, as  
14 aforesaid, shall share in up to fifty percent  
15 of the net proceeds due the patient, in the  
16 proportion that each claim bears to the total  
17 amount of all other liens of health care  
18 practitioners, hospitals, clinics or other  
19 institutions. "Net proceeds", as used in  
20 this section, means the amount remaining  
21 after the payment of contractual attorney  
22 fees, if any, and other expenses of recovery.

23 4. In administering the lien of the  
24 health care provider, the insurance carrier  
25 may pay the amount due secured by the lien of  
26 the health care provider directly, if the  
27 claimant authorizes it and does not challenge  
28 the amount of the customary charges or that  
29 the treatment provided was for injuries cause  
30 by the tort-feasor.

31 5. Any health care provider electing to  
32 receive benefits hereunder releases the  
33 claimant from further liability on the cost  
34 of the services and treatment provided to  
35 that point in time.]